IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 5184 OF 2005

Ranjana Pendharkar .... Petitioner

versus

Students Education Trust & ors..... Respondent.

ALONGWITH

WRIT PETITION NO. 5185 OF 2005

Ms. Seema P. Kalle .... Petitioner

versus

Students Education Trust & ors... Respondent.

Shri Sunil Dighe for the petitioner.
Shri P.J.Jayakar for Respondents 1 and 2
Shri V.S.Mhaispurkar AGP for Respondents 3 and 4.

CORAM; A.P. DESHPANDE, J.
DATED; 15TH FEBRUARY, 2007

P.C.;

Rule. Rule made returnable forthwith and taken up for final hearing by consent of parties.

1. As the facts involved in both the writ petitions and the parties thereto are same, the writ petitions are being disposed of by this common order.

2. Both the petitioners questiones the legality and validity of the order passed by the Presiding Officer, School Tribunal dismissing their respective appeals, challenging the order of termination, severing the relationship of employer and employee with effect from 14-8-2001.

3. Both the petitioners, it is undisputed, are trained and qualified teachers to teach in the Secondary School and hence appointed in July 1995 as Assistant Teachers, in the school administered and managed by the respondent no.1. Though the petitioners were initially appointed in July 1995, the said appointment was a temporary appointment. The petitioners came to be continued in service in the academic years 1995-96, 1996-97, 1997-98, 1998-99, 1999-2000 and 2000-2001 without any interruption. After commencement of academic session 2001-02 the petitioners were terminated from service with effect from 14-8-2001. Thus, admittedly the petitioners had put in six years of continuous service before their termination. Petitioners have contended before the Tribunal that though their appointment is shown to be temporary, the same was against permanent posts and clear vacancies and hence on completion of two years satisfactory service, they need to be treated as confirmed employees having regard to section 5(2) of the Act. Respondent no.1 tried to justify the termination before the Presiding Officer, School Tribunal by contending that as the Education Officer declined to approve the appointment of the petitioners in academic session 2001-02, management was constrained to terminate the petitioners from service. The stand of the Education Officer is that as there

was a backlog of some of the categories of the backward classes, the Education Officer did not grant approval to the appointment of the petitioners in the year 2001-02. The learned counsel appearing for respondent no.1 society and the School has placed on record a chart indicating the position in regard to backlog right since the initial appointment of the petitioners in the school. The correctness of the chart placed on record by the respondents 1 and 2 viz. the school management has been served on the petitioners, so also the Education Inspector, respondent no.3. The Education Inspector is present in the court and on instructions from the officer concerned, the learned AGP submits that the said chart is true and is the correct reflection of the position in regard to the vacancies and the backlog. The chart filed by the respondent no.1 is thus admitted to be true and correct by all parties to this petition and hence relied upon for disposal of this writ petition.

The chart is marked as 'X' for identification.

4. Turning to the present position of the sanctioned strength of the teachers in the school in academic session 2006, so also present position of the backlog, it is clearly revealed that there are eight vacancies available (including the petitioners) and to be filled in by the management. Out of the eight vacancies, four would be consumed for filling in the backlog

whereas four are available for accommodating the candidates from the open category. Both the petitioners belong to open category. The learned counsel appearing for the respondents 1 and 2 submit that the work and behaviour of the petitioners while in service, for about six years prior to their termination, was satisfactory and the respondents 1 and 2 have nothing against the petitioners. The learned counsel for the petitioners submit that if the petitioners are granted re-instatement and continuity of service, they are ready to give up their claim for backwages for the period they had not worked, i.e. from 14-8-2001 i.e.from the date of termination till date. On instructions of the Education officer, who is present in the court, the learned AGP submits that having regard to the vacancies which are in existence today, the petitioners can be accommodated. However no financial burden in the form of backwages will be born either by Education Officer, or by the State Government. In view of the agreed position which emerges from the statements made by the respective parties, these writ petitions can be conveniently disposed of by granting reinstatement with continuity of service to the petitioners. However, without payment of any backwages. On concession made available in the form of statements recorded hereinabove, I dispose of the writ petition by passing the following order.

1. The impugned oral orders of termination dated 14-8-2001 as also the judgment and order passed by the School Tribunal dated 3-5-2005 is quashed and set aside. The respondents are directed to reinstate the petitioners in service as Assistant teachers with effect from 14-8-2001.

ii) The petitioners are entitled to continuity of service together with all other incidental and ancilliary benefits flowing from the reinstatement with continuity of service, except backwages.

iii) It is made clear that the petitioners will not be entitled to backwages for the period commencing from 14-8-2001 till date.

iv) The Education Officer shall approve the appointment of the petitioners by treating them as having acquired confirmation on completion of two years satisfactory service from the initial appointment. Rule made absolute in above terms.

...